

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.117 High-Technology Data Center Equipment.

(1) **Purpose.** This Rule addresses the sales and use tax exemption in O.C.G.A. § 48-8-3(68.1) for certain high-technology data center equipment.

(2) **Definitions.** For purposes of this Rule, the following definitions apply:

(a) “Exemption Start Date,” used synonymously with the term “Investment Start Date,” means the date on or after July 1, 2018, chosen by the High-Technology Data Center and indicated on its Certificate of Exemption application, which begins the seven-year period during which the Minimum Investment Threshold must be met.

(b) “High-Technology Data Center” means a single legal entity’s facility, campus of facilities, or array of interconnected facilities in this state that is developed to power, cool, secure, and connect its own equipment or the computer equipment of High-Technology Data Center Customers and that has an investment budget plan which meets the High-Technology Data Center Minimum Investment Threshold.

1. A facility, campus of facilities, or array of interconnected facilities must be located wholly within one

county in this state, unless otherwise approved by the Commissioner.

(c) “High-Technology Data Center Customer” means a client, tenant, licensee, or end user of a High-Technology Data Center that is a party to a contract that is for an initial term of at least 36 months and that is for data center services with the High-Technology Data Center.

1. A client, tenant, licensee, or end user of a High-Technology Data Center is a High-Technology Data Center Customer only while such client, tenant, licensee, or end user is a party to a qualifying contract.

2. The initial term of the contract may begin before the effective date of this exemption.

3. If a qualifying contract is extended for any consecutive term after the initial term, the customer remains a High-Technology Data Center Customer during such term.

(d) “High-Technology Data Center Equipment”

1. Subject to the exclusion in paragraph (2)(d)2., High-Technology Data Center Equipment means

(i) Computer equipment, as defined in O.C.G.A. § 48-8-3(68), of a High-Technology Data Center or such equipment of a High-Technology Data Center Customer that is used or deployed in the High-Technology Data Center; and

(ii) The High-Technology Data Center’s or High-Technology Data Center Customer’s materials, components, machinery, hardware, software, or equipment, including but not limited to, emergency backup

generators, air handling units, cooling towers, energy storage or energy efficiency technology, switches, power distribution units, switching gear, peripheral computer devices, routers, batteries, wiring, cabling, or conduit, which equipment or materials are used to:

(I) Create, manage, facilitate, or maintain the physical and digital environments for computer equipment in the High-Technology Data Center;

(II) Protect the High-Technology Data Center Equipment from physical, environmental, or digital threats; or

(III) Generate or provide constant delivery of power, environmental conditioning, air cooling, or telecommunications services for the High-Technology Data Center.

2. This term shall not include Real Property, as defined in this Rule.

(e) “High-Technology Data Center Minimum Investment Threshold,” used synonymously with the term “Minimum Investment Threshold,” means creating and maintaining an average of 20 New Quality Jobs at the High-Technology Data Center during the Investment Period and making the qualifying aggregate expenditures during the Investment Period, as described in paragraph (4).

(f) “Investment Period” means the seven-year period, chosen by the High-Technology Data Center, during which the Minimum Investment Threshold must be met.

1. The Investment Period begins on the Investment Start Date.

2. The Investment Period ends seven consecutive years after the Investment Start Date on the same month and date as the Investment Start Date.

3. The Investment Period may be any consecutive seven-year period that begins on or after July 1, 2018 and ends on or before December 31, 2028.

(g) “New Quality Job” means a new quality job, as defined in O.C.G.A. § 48-7-40.17(a)(2), that is created and maintained at the High-Technology Data Center.

(h) “Real Property” means land, any buildings thereon, and any fixtures attached thereto. Fixtures are tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached.

(3) Scope of Exemption.

(a) The purchase and use of High-Technology Data Center Equipment to be incorporated or used in a High-Technology Data Center are exempt from state and local sales and use tax, subject to the following conditions:

1. The purchaser must be a High-Technology Data Center or a High-Technology Data Center Customer;

2. Such High-Technology Data Center must meet the High-Technology Data Center Minimum Investment Threshold;

3. Such High-Technology Data Center must obtain a Certificate of Exemption; and

4. If the purchaser is a High-Technology Data Center Customer, the High-Technology Data Center Customer must obtain a Certificate of Exemption.

(b) This exemption is effective from July 1, 2018, through and including December 31, 2028. Purchases must be made within these effective dates to qualify for exemption.

(4) Minimum Investment Threshold.

(a) To meet the High-Technology Data Center's Minimum Investment Threshold:

1. An average of 20 New Quality Jobs must be created and maintained at the High-Technology Data Center during the Investment Period; and

2. The High-Technology Data Center must make the required amount of qualifying aggregate expenditures, as set forth in paragraph (4)(c), during the Investment Period.

(b) To determine the average number of New Quality Jobs created and maintained during the Investment Period, a High-Technology Data Center must determine the number of New Quality Jobs created or maintained at the High-Technology Data Center in each month during the Investment Period, add the monthly numbers, and

divide the sum by the number of months in the Investment Period.

(c) The aggregate expenditure requirement is based on the population of the county in which the High-Technology Data Center is located as reported in the United States decennial census of 2010. If county population data from a more recent United States decennial census is available as of the Investment Start Date, county population shall be based upon such data. The aggregate expenditure requirement is

1. \$250 million for High-Technology Data Centers located in a county in this state having a population greater than 50,000;

2. \$150 million for High-Technology Data Centers located in a county in this state having a population greater than 30,000 and less than 50,001; and

3. \$100 million for High-Technology Data Centers located in a county in this state having a population less than 30,001.

(d) Calculating Qualifying Aggregate Expenditures.

1. Qualifying expenditures are expenditures on the design and construction of the High-Technology Data Center and High-Technology Data Center Equipment to be used or incorporated in the High-Technology Data Center. While real property counts towards the Minimum Investment Threshold, real property is not exempt under this Rule.

(i) If such an expenditure is made pursuant to a lease, the term of which extends before or after the Investment Period, the expenditure amount that may be used for purposes of satisfying the expenditure requirement shall be determined by dividing the total amount to be paid pursuant to the lease by the number of calendar years in the lease term and then multiplying that quotient by the number of calendar years in the lease term that are during the Investment Period.

2. Expenditures by the High-Technology Data Center and its High-Technology Data Center Customers may count for purposes of satisfying the expenditure requirement.

3. A High-Technology Data Center may not count the purchase or lease of the same High-Technology Data Center Equipment more than once. For example, if a High-Technology Data Center purchases High-Technology Data Center Equipment and subsequently leases it to a High-Technology Data Center Customer, only one transaction, either the original purchase or the subsequent lease, may count for purposes of satisfying the Minimum Investment Threshold.

(5) Certificates of Exemption.

(a) Application Process.

1. Any High-Technology Data Center or High-Technology Data Center Customer desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(68.1) must file an application for a certificate of exemption.

2. Applications must be filed electronically with the Department on or after January 1, 2019.

3. A High-Technology Data Center's application may request the High-Technology Data Center's legal name, mailing address, facility location, Investment Start Date, Georgia income tax filing and payment history, the value of the center's title or interest in real property owned in this state, a limited waiver of confidentiality for the administration of this exemption, documentation sufficient to show the likelihood of satisfying the High-Technology Data Center Minimum Investment Threshold, and any other information required by the Department for the determination of the claim for exemption.

4. A High-Technology Data Center Customer's application may request the applicant's legal name, mailing address, name of its registered High-Technology Data Center, a copy of the lease agreement with its corresponding High-Technology Data Center, and any other information required by the Department for the determination of the claim for exemption.

(i) The Department will not issue a Certificate of Exemption to a High-Technology Data Center Customer until a Certificate of Exemption has been issued to its corresponding High-Technology Data Center.

5. This application requirement is applicable to holders of direct payment permits granted under Regulation 560-12-1-.16.

(b) Issuance of Certificate.

1. Upon approval of the application, including a determination that a High-Technology Data Center will more likely than not meet the Minimum Investment Threshold, the Department will issue a Certificate of Exemption to such High-Technology Data Center.

2. A Certificate of Exemption is issued for the exclusive use of a qualifying applicant but may be transferrable upon the sale of the High-Technology Data Center and the approval of the commissioner.

(c) Bond.

1. As a condition precedent to the issuance of a Certificate of Exemption, the Department, in the Commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state.

2. In determining whether to require a bond and the value of such bond, the Commissioner will consider factors, including, but not limited to, the value of the data center's title or interest in real property owned in this state as of the application date and the data center's Georgia tax filing and payment history.

3. If required, the bond shall be in an amount fixed by the Department, not to exceed \$20 million.

4. Such bond shall be forfeited and paid to the general fund in an amount representing all taxes and interest required to be repaid if the High-Technology Data Center

fails to meet the Minimum Investment Threshold prior to the expiration of the seven-year period.

5. Such bond shall be released when the High-Technology Data Center timely meets the Minimum Investment Threshold.

(d) Revocation.

1. A Certificate of Exemption issued pursuant to this exemption to a High-Technology Data Center is subject to revocation if the Department determines that such certificate holder has not complied with the provisions of the exemption, including, but not limited to, the following:

(i) During the Investment Period, it is determined that the High-Technology Data Center is not likely to meet the applicable Minimum Investment Threshold;

(ii) At the conclusion of the Investment Period, the High-Technology Data Center failed to meet the applicable Minimum Investment Threshold;

(iii) The High-Technology Data Center does not file the Annual Report as required in paragraph (7), below, with the Department; or

(iv) The High-Technology Data Center claims any credit authorized under O.C.G.A. §§ 48-7-40 through 48-7-40.33 or O.C.G.A. § 36-62-5.1 on its tax return during any year in which the High-Technology Data Center claims the benefit of this exemption.

2. A Certificate of Exemption issued pursuant to this exemption to a High-Technology Data Center Customer is subject to revocation if the Department determines that

such certificate holder has not complied with the provisions of the exemption, including, but not limited to, the following:

(i) The Certificate of Exemption of its High-Technology Data Center is revoked; or

(ii) The High-Technology Data Center Customer is not, or is no longer, a party to a contract that is for an initial term of at least 36 months and that is for data center services with the High-Technology Data Center.

3. If it is determined that there are grounds for revocation, the Department will send written notice to the certificate holder. The notice will include the grounds for revocation, the revocation date, and the procedure by which the certificate holder may dispute the revocation.

4. Once a Certificate of Exemption has been revoked, the certificate holder must immediately notify all vendors to which such certificate holder furnished the Certificate of Exemption that such Certificate of Exemption is no longer valid. The certificate holder must maintain records of notifications of revocation sent to vendors.

5. It is unlawful for any person to attempt to evade sales and use taxes by using a certificate of exemption obtained through fraud or by using a certificate of exemption to which a purchaser is not entitled.

6. If a High-Technology Data Center's Certificate of Exemption is revoked, the center will be liable for all tax exempted or refunded under this exemption on its purchases, plus interest as computed under O.C.G.A. § 48-2-40. If tax and interest is not paid within 90 days of the

revocation of the Certificate of Exemption, penalties shall accrue pursuant to O.C.G.A. § 48-8-66.

7. If a High-Technology Data Center Customer's Certificate of Exemption is revoked, the customer and its corresponding High-Technology Data Center will be liable, as provided below, for all tax exempted or refunded under this exemption on the customer's purchases, plus interest as computed under O.C.G.A. § 48-2-40. If tax and interest is not paid within 90 days of the revocation of the Certificate of Exemption, penalties shall accrue pursuant to O.C.G.A. § 48-8-66.

(i) If a High-Technology Data Center Customer's Certificate of Exemption is revoked solely because its corresponding High-Technology Data Center's Certificate of Exemption is revoked, the High-Technology Data Center Customer is not required to repay the tax exempted or refunded under this exemption on the customer's purchases. The customer's corresponding High-Technology Data Center is required to repay such tax.

(ii) If a High-Technology Data Center Customer Certificate of Exemption is revoked because the certificate holder does not meet the definition of High-Technology Data Center Customer, the purported customer is required to repay the tax exempted or refunded under this exemption for periods when the purported customer did not meet the definition of High-Technology Data Center Customer.

(iii) If a High-Technology Data Center Customer's Certificate of Exemption is revoked solely because of the expiration of at least a 36-month contract with a

certificated High-Technology Data Center, neither the High-Technology Data Center Customer nor its corresponding High-Technology Data Center is required to repay the tax exempted or refunded for periods when the customer met the definition of a High-Technology Data Center Customer.

8. Nothing in this Rule prohibits the reinstatement or reissuance of a Certificate of Exemption to a qualified High-Technology Data Center or High-Technology Data Center Customer.

(e) All Certificates of Exemption issued pursuant to this exemption expire on December 31, 2028, by operation of law.

(6) Claiming the Benefit of the Exemption.

(a) Any person making a sale or lease of High-Technology Data Center Equipment must collect the sales and use tax unless the purchaser furnishes such seller with a valid and complete Certificate of Exemption.

(b) A High-Technology Data Center Equipment supplier is relieved from the collection of sales and use tax on the sale or lease of High-Technology Data Center Equipment if the supplier takes a Certificate of Exemption from a certificate holder in good faith.

(c) Refund Claims.

1. Subject to paragraph (6)(c)5. of this Rule and other applicable laws, a refund claim may be filed for taxes paid on purchases qualifying for this exemption for any period on or after July 1, 2018, during which the High-Technology

Data Center or High-Technology Data Center Customer had not yet applied for and received its Certificate of Exemption from the Department.

2. Claimants must submit refund claims electronically.

3. As a condition precedent to the issuance of a refund, the claimant must apply for and receive its Certificate of Exemption.

4. As provided by O.C.G.A. § 48-2-35.1, refunds issued pursuant to this exemption shall not bear interest.

5. A refund claim may be filed by the taxpayer at any time within three years after the date of the payment of the tax to the Department.

(d) Notwithstanding otherwise applicable recordkeeping requirements, any High-Technology Data Center or High-Technology Data Center Customer claiming the benefit of this exemption shall keep and preserve all books and records as long as needed to support such claim.

(7) Annual Report.

(a) All High-Technology Data Centers must submit an annual report electronically to the Department.

1. The annual report must be submitted by April 30 of each year if the High-Technology Data Center claimed or will claim the benefit of the exemption for purchases in the prior calendar year.

2. The annual reporting requirement does not end at the expiration of the Investment Period. The annual report

is required for every year in which the High-Technology Data Center claims the benefit of exemption set forth in this Rule.

(b) Every High-Technology Data Center's annual report must include the following:

1. The amount of tax exempted or refunded under this exemption on purchases by High-Technology Data Centers during the preceding calendar year;

2. A list of High-Technology Data Center Customers and the amount of tax exempted or refunded under this exemption on purchases by each High-Technology Data Center Customer during the preceding calendar year;

3. The number of New Quality Jobs created or maintained at the High-Technology Data Center on a monthly basis during the preceding calendar year;

4. The total amount of High-Technology Data Center's employee payroll during the preceding calendar year; and

5. The total amount of qualifying aggregate expenditures made since the Investment Start Date that the High-Technology Data Center counts for purposes of satisfying the expenditure requirement of its Minimum Investment Threshold. This amount does not need to be reported after the High-Technology Data Center submits its Investment Report at the conclusion of the Investment Period.

(c) A High-Technology Data Center's failure to submit a complete and accurate annual report is grounds for the

revocation of the High-Technology Data Center's Certificate of Exemption.

(8) Investment Report.

(a) Within 60 days after the end of the Investment Period, a High-Technology Data Center must file a report electronically with the Department.

(b) The report must detail the following:

1. The expenditures incurred that count toward its Minimum Investment Threshold, including the expenditure date, vendor, and description of each purchase;

2. The average number of New Quality Jobs created and maintained during the Investment Period, including a description of each position, wage, and work hours; and

3. Any other information that the commissioner may reasonably require to determine whether the High-Technology Data Center has met the Minimum Investment Threshold.

(c) If it is determined that a High-Technology Data Center failed to meet its Minimum Investment Threshold, such High-Technology Data Center must repay all taxes exempted or refunded pursuant to its Certificate of Exemption and all taxes exempted or refunded pursuant to the Certificates of Exemption of its High-Technology Data Center Customers.

1. Interest will be due at the rate specified in O.C.G.A. § 48-2-40 computed from the date such taxes would have been due but for this exemption.

2. Such repayment of taxes and interest must be made within 90 days after notification of such failure.

3. Such repayment will be calculated notwithstanding otherwise applicable periods of limitation for assessment.

(9) Impact on Certain Income Tax Credits.

(a) A High-Technology Data Center is not entitled to claim any credit authorized under O.C.G.A. §§ 48-7-40 through 48-7-40.33 or O.C.G.A. § 36-62-5.1 on its tax return during any calendar year in which it claims the benefit of the exemption set forth in this Rule.

(b) If a determination is made by the Department that the High-Technology Data Center must repay all taxes exempted or refunded pursuant this exemption, such High-Technology Data Center may, notwithstanding otherwise applicable periods of limitation, file amended income tax returns claiming any credit to which it would have been entitled under O.C.G.A. §§ 48-7-40 through 48-7-40.33 or O.C.G.A. § 36-62-5.1 but for having claimed the exemption set forth in this Rule.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.17, 48-8-3, 48-8-3.2.